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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

April 18, 1996

**EX PARTE**

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

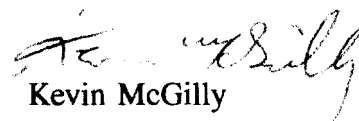
Re: CC Docket 92-237

In the Matter Rulemaking to Amend Part 1, 2,  
21, and 25 of the Commission's Rules to  
Redesignate the 27.5 - 29.5 GHz Frequency Band  
to Reallocate the 29.5 - 30.0 GHz Frequency Band  
to Establish Rules and Policies for Local Multipoint  
Distribution Service and for Fixed Satellite Services.

Dear Mr. Caton:

Attached please find, for inclusion in the record of the above-captioned proceeding, a copy of a letter sent today to Mr. David Wye of the Wireless Telecommunications Bureau, on behalf of ComTech Associates, Inc.

Sincerely,

  
Kevin McGilly

cc: Mr. David Wye

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FEDERAL COMMUNICATIONS COMMISSION  
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April 19, 1996

EX PARTE

Mr. David Wye  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street N.W., Suite 5002  
Washington, D.C. 20554

Re: CC Docket 92-237

In the Matter Rulemaking to Amend Part 1, 2,  
21, and 25 of the Commission's Rules to  
Redesignate the 27.5 - 29.5 GHz Frequency Band  
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Dear Mr. Wye:

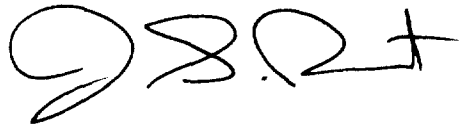
As promised at our recent meeting, please find attached a draft preemption rule addressing our concerns about the potential negative impact of local zoning ordinances and other regulations on local multipoint distribution services (LMDS). ComTech Associates respectfully urges the Commission to include such a rule in its order adopting LMDS service rules.

LMDS holds tremendous potential to emerge as a major source of competition not only in the video programming distribution market, but in the local telecommunications services market as well. But this potential will only be realized if the Commission acts to preempt unwarranted zoning restrictions affecting LMDS devices.

The proposed rule is modeled on the Commission's existing rule preempting local regulations that limit transmission and reception by satellite earth station antennas, and on the Commission's proposed rule preempting local regulations affecting the use of devices designed for over-the-air reception of television broadcast signals or multichannel multipoint distribution service. The same pro-competitive rationale for preempting those regulations applies with equal, if not greater, force to local regulations that hinder subscribers' use of LMDS transmit and receive devices. Such regulations harm competition in not one, but two key markets that currently are dominated by single providers: local telecommunications services and multichannel video programming distribution.

ComTech also wishes to reiterate its strong conviction that this is the appropriate proceeding in which to adopt a preemption standard for LMDS transmit and receive devices. The issue should not be deferred to another proceeding, or to a later date. Potential bidders in the LMDS license auctions require certainty that their potential subscribers will be able to install and use their LMDS devices. The less certain bidders are of this, the less they will be willing to bid for the licenses. This issue is especially critical for ComTech, which intends to focus primarily on the provision of competitive telecommunications services. This plan is contingent on our subscribers' ability to receive and transmit LMDS signals. Moreover, we wish to stress that LMDS transmit/receive antennas are identical in size, shape, and placement to receive only antennas. Because the Commission's existing and proposed preemption rules may not be sufficiently broad to encompass the use of LMDS devices for both functions, it is imperative that an LMDS-specific preemption rule be included in the service rules adopted in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read 'JP' followed by a stylized flourish.

Jason Priest

Attachment

cc: Mr. William Caton

Proposed Rule:

- (a) (1) Any state or local zoning, land-use, building, or similar regulation, that affects the installation, maintenance, or use of devices designed for over-the-air reception or transmission of local multipoint distribution service signals (as defined in § 21.\_\_), shall be presumed unreasonable and is therefore preempted subject to paragraph (a)(2). No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any regulation covered by this presumption unless the promulgating authority has obtained a waiver from the Commission pursuant to paragraph (b), or a final declaration from the Commission or a court of competent jurisdiction that the presumption has been rebutted pursuant to paragraph (a)(2)
- (2) Any presumption arising from paragraph (a)(1) of this section may be rebutted upon a showing that the regulation in question:
  - (A) is necessary to accomplish a clearly defined health or safety objective that is stated in the text of the regulation itself;
  - (B) is no more burdensome to local multipoint distribution service reception and transmission device users than is necessary to achieve the health or safety objective; and
  - (C) is specifically applicable on its face to devices designed for over-the-air reception or transmission of local multipoint distribution signals.
- (b) Any state or local authority that wishes to maintain and enforce zoning or other regulations inconsistent with this section may apply to the Commission for a full or partial waiver of this section. Such waivers may be granted by the Commission in its sole discretion, upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No application for waiver shall be considered unless it specifically sets forth the particular regulation for which waiver is sought. Waivers granted in accordance with this section shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise.
- (c) No restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a subscriber's ability to install, maintain, or use devices designed for the reception or transmission of local multipoint distribution service signals.